Buan Joong Sdn Bhd v Superintendent of Lands & Surveys Kuching Division

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO Q–01–26 OF 2000
GOPAL SRI RAM, MOKHTAR SIDIN JJCA AND RAUS SHARIF J
16 MAY 2005

Land Law — Acquisition of land — Compensation — Date of valuation — Whether should be date of s 47 or 48 notification — Sarawak Land Code ss 47, 48 & 60

Land Law — Acquisition of land — Market value — Comparable value of smaller land opposite acquired land — Whether should be used to determine market value of acquired property

The appellant's land was acquired by the Sarawak Government and first placed under s 47 of the Sarawak Land Code notification on 7 November 1974. Subsequently the land was placed under another s 47 notification on 29 March 1990. The notification under s 48 was imposed on the subject land on 8 October 1992. An inquiry held in 1992 by the acting Superintendent of Lands and Survey, Kuching Division ('the Superintendent') awarded a compensation of RM984,060 for the acquisition of the land. Before the High Court, a further additional sum of RM204,480 was awarded. The appellant argued that the learned judge should have used the s 48 notification of 8 October 1992 — and not the s 47 notification of 29 March 1990 — as the valuation date of the land. This was because, according to the learned counsel, under s 47 notification dated 29 March 1990, it was stated that the purpose was for road construction and improvement while under the notification under s 48, the subject land was acquired for the purpose of a new prison. Another issue raised by the appellant was that the learned judge failed to consider the award of RM32,376 per acre awarded by the Superintendent to the applicant in respect of the acquisition of a smaller piece of land — Lot 860 — situated opposite the appellant's land. That piece of land was acquired under the same 1990 notification and the award was made in 1998.

Held, dismissing the appeal:

(1) The relevant part of s 60(1) of the Land Code says that 'the court shall take into consideration: (a) the market value at the date of the publication of the notification under s 47 or, if no such notification has been published, the market value at the date of the posting of the declaration made under s 48.' In this case there was s 47 notification, clearly it could not argued otherwise that the year 1990, the date of the s 47 notification, should be taken in s 60(1) (see para 7). Further, assuming the s 47 notification was not valid then the 1974 notification should be taken to be the valid and effective notification because there was no application to set it aside or have it declared null and void. In holding that the 1990

notification to be valid, the learned judge was giving the benefit to the appellant in taking that date to be the market value of the subject property (see para 8).

(2) It is an acceptable principle that small land is easier to dispose and as such it fetches a higher price. From the evidence Lot 860 consists of an area of 0.32 acres only, and for that reason the Superintendent deemed fit to award the sum of RM32,376 per acre. The appellant's property as pointed consisted an area of approximately 195.26 acres. The learned Judge was correct in not accepting Lot 860's award as a good comparable to determine the market value of the subject property (see para 10).

[**Bahasa Malaysia summary**

Tanah perayu boleh diambil oleh Kerajaan Sarawak dan pada mulanya diletak di bawah pemakluman s 47 Kanun Tanah Sarawak pada 7 November 1974. Berikutan itu tanah tersebut diletakkan di bawah pemakluman s 47 yang lain pada 29 Mac 1990. Pemakluman di bawah s 48 digunakan ke atas tanah subjek pada 8 Oktober 1992. Satu siasatan diadakan pada tahun 1992 oleh Penguasa Tanah dan Penilaian, Bahagian Kuching ('Penguasa') yang mengawardkan pampasan sejumlah RM984,060 untuk perolehan tanah itu. Di hadapan Mahkamah Tinggi, sejumlah tambahan RM204,480 diawardkan. Perayu berhujah bahawa hakim yang bijaksana sepatutnya menggunakan pemakluman s 48 bertarikh 8 Oktober 1992 — dan bukan pemakluman s 47 bertarikh 29 Mac 1990 — sebagai tarikh penilaian ke atas tanah itu. Ini adalah kerana, menurut peguam yang bijaksana, di bawah pemakluman s 47 bertarikh 29 Mac 1990, ia menyatakan bahawa tujuannya adalah untuk pembangunan dan pembaikan jalan manakala pemakluman di bawah s 48, tanah yang dipersoalkan diperoleh bagi tujuan penjara baru. Satu lagi persoalan yang ditimbulkan oleh perayu adalah bahawa hakim yang bijaksana gagal untuk menimbangkan award RM32,376 seekar yang diawardkan oleh Penguasa kepada pemohon berhubung perolehan sekeping tanah yang lebih kecil — Lot 860 — yang terletak bertentangan dengan tanah perayu. Tanah tersebut diperoleh di bawah pemakluman 1990 yang sama dan award telah dibuat dalam tahun 1998.

Diputuskan, menolak rayuan:

(1) Bahagian relevan s 60(1) Kanun Tanah mengatakan bahawa 'the court shall take into consideration: (a) the market value at the date of the publication of the notification under s 47 or, if no such notification has been published, the market value at the date of the posting of the declaration made under s 48.' Dalam kes ini terdapat pemakluman s 47, jelas ia tidak boleh dihujahkan sebaliknya bahawa pada tahun 1990, tarikh pemakluman s 47, sepatutnya diambilkira dalam s 60(1) (lihat perenggan 7). Tambahan pula, dengan andaian pemakluman s 47 adalah tidak sah maka pemakluman 1974 hendaklah dianggap pemakluman

yang sah dan berkuatkuasa kerana tiada permohonan untuk mengetepikan atau mengisytiharkannya terbatal dan tidak sah. Dalam memutuskan bahawa pemakluman 1990 adalah sah, hakim yang bijaksana berpihak kepada perayu dengan mengambilkira tarikh itu sebagai nilai pasaran hartanah yang dipersoalkan (lihat perenggan 8).

(2) Ia adalah prinsip yang boleh diterima di mana sekeping tanah kecil lebih senang dijual kerana boleh mencapai harga yang lebih tinggi. Berdasarkan keterangan Lot 860 meliputi kawasan seluas 0.32 ekar sahaja, dan untuk maksud ini, Penguasa menganggap ia sesuai untuk memberikan award sejumlah M32,376 seekar. Hartanah perayu sepertimana dikatakan meliputi keluasan 195.26 ekar. Hakim yang bijaksana adalah betul dengan tidak menerima award Lot 860 sebagai setanding untuk menentukan nilai pasaran hartanah yang dipersoalkan (lihat perenggan 10).]

Notes

For cases on compensation for acquisition of land, see 8(2) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1582–1604.

For cases on market value, see 8(2) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1738–1765.

Legislation referred to

Sarawak Land Code ss 47, 48, Part IV

Appeal from: Civil Appeal No LR–15–01 of 1996–1 (High Court, Kuching)

Arthur Lee Cheng Chuan (Arthur Lee, Lin & Co) for the appellant.

Tuan Haji Abdul Razak (Timbalan Peguam Besar Negeri Sarawak) (Kamar Peguam Besar Negeri Sarawak) for the respondent.

Raus Sharif J (delivering judgment of the court):

[1] This is an appeal by the appellant against the decision of the High Court Kuching on an award for a compulsory acquisition by the Government of Sarawak under Part IV of the Sarawak Land Code (Land Code).

[2] This appeal was heard and dismissed on 28 June 2004. We now give our reasons.

[3] The subject land, at the material time was known as Lot 438, Block 4 Sentah — Segu Land District. It was a vacant piece of land located at 14th–15th Mile, Pennissen Road, Kuching measured 42.06 hectares in size, which is equivalent to 105.26 acres.

[4] The subject land was first placed under s 47 of the Land Code notification on 7 November 1974. Subsequently the subject land was placed under another

s 47 notification on 29 March 1990. The notification under s 48 was imposed on the subject land on 8 October 1992. Under the s 48 notification, it was stated that the subject land was acquired for public purposes, namely the 'New Prison site'.

[5] On 19 September 1992 an inquiry was held by the acting Superintendent of Lands and Survey, Kuching Division ('the Superintendent'). The Superintendent awarded a compensation of RM984,060 for the acquisition of the subject land. Before the High Court, a further additional sum of RM204,480 was awarded as compensation for the acquisition of the subject land.

[6] Before us, the first complaint raised by the learned counsel for the appellant was the learned judge's application of s 47 notification of 29 March 1990 as the valuation date of the subject land. It was submitted by the learned counsel that the learned judge should have used the s 48 notification of 8October 1992 as the valuation date. This is because, according to the learned counsel, under s 47 notification dated 29 March 1990, it was stated that the purpose was for road construction and improvement while under the notification under s 48, the subject land was acquired for the purpose of a new prison.

[7] This issue was dealt by the learned judge as follows:

> … However, Mr Kho Lit Kiat, learned counsel for the appellant, argued that 1992, the year of the publication of the s 48 notification should be taken because the s47 notification adverted to the likelihood of acquisition for purposes which are not the same as that mentioned in s 48 notification and that only part of the land was stated to be affected. He did not cite any authority in support of his argument. I do not think he can find any, because the plain words of s 60(1) do not permit such an interpretation. The relevant part of s 60(1) says that 'the court shall take into consideration: (a) the market value at the date of the publication of the notification under s 47 or, if no such notification has been published, the market value at the date of the posting of the declaration made under s 48'. In this case there was s 47 notification, clearly it cannot argue otherwise that the year 1990, the date of the s 47 notification, should be taken in s 60(1).

[8] We agree with the reasoning of the learned judge. Further, as pointed by the learned judge that assuming the s 47 notification was not valid then the 1974 notification should be taken to be the valid and effective notification because there was no application to set it aside or have it declared null and void. If that is the case, then the market value of the subject property should be the valuation as on 7 November 1974; which would not benefit the appellant at all. In holding that the 1990 notification to be valid, the learned judge was giving the benefit to the appellant in taking that date to be the market value of the subject property. We see no merit in the submission of the learned counsel for the appellant.

[9] Another issue raised by the learned counsel for the appellant was that the learned judge failed to consider the award of RM32,376 per acre awarded

by the Superintendent to the applicant in respect of the acquisition on Lot 860 Block 4 Sentah-Segu Land District notification. That piece of land which was part of Lot 545, Block Sentah-Segu Land District and situated opposite the subject land. That piece of land was acquired under the same 1990 notification and the award was made in 1998.

[10] It is an acceptable principle that small land is easier to dispose and as such it fetches a higher price. From the evidence Lot 860 consists of an area of 0.32 acres only, and for that reason the Superintendent deemed fit to award the sum of RM32,376 per acre. The subject property as pointed consists an area of approximately 195.26 acres. We are of the view that the learned Judge was correct in not accepting the award as a good comparable to determine the market value of the subject property.

[11] We could not find any error on the part of the learned judge in making the award. He had taken into consideration all the comparables submitted by valuers of both sides and made the necessary adjustments which lead him to increase the award by RM204,480. This sum is an additional award to the original award of RM984,060 made by the Superintendent.

[12] For the above reasons we dismissed the appeal.

Appeal dismissed.

Reported by Loo Lai Mee